

KELLOGG, HUBER & HANSEN

Mr. Andrew S. Fishel
February 23, 1994
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Commission's Pioneer's Preference Program; it has consistently supported the Commission's decision to open up spectrum for new personal communications services. APC concedes as much. APC Letter at 9 (noting that, in all its previous filings, "Pacific Bell supported the preference policy for broadband PCS"). And, contrary to APC's assertions, Pacific Bell does not retreat from that support today. It wishes only to ensure that all preference awards are based on innovative technology rather than lobbying.

APC also asserts that Pacific Bell is running a "media campaign" concerning the ex parte contacts described in my letter, which is designed to impugn APC's and the Commission's integrity. Apparently intended as evidence in support of that claim, APC complains that it "did not receive a 'service' copy of that letter until delivery of regular mail on Saturday, January 29," whereas Pacific Bell immediately contacted the press to publicize the letter. APC Letter at 1-2 n.2. APC never mentions that it asked for and received a courtesy copy, by hand delivery, two days earlier on January 27. For APC to complain about when the official "service" copy arrived -- not once but twice, ibid. & id. at 8 -- without ever mentioning the earlier arriving courtesy copy is disingenuous.

More fundamentally, nothing in my letter can be said to impugn the integrity of the Commission. To the contrary, as explained in my initial letter (at 5), Pacific Bell believes that the Commission has been particularly diligent about ex parte contacts in these matters, repeatedly warning the parties about the strict requirements of its rules.

Beyond this, Pacific Bell categorically denies conducting a media campaign concerning the ex parte issues raised in my letter. In fact, Pacific Bell specifically instructed its employees that they were to try to avoid discussing the letter if contacted by the press.³ It is for this reason that APC cannot find a Pacific Bell quote in the press concerning ex parte contacts. The one remark that APC does quote, the assertion that Pacific Telesis may be "hobbled" by the preference awards, APC Letter at 8, was made by

³APC does not even identify the source of its information concerning its fictitious media campaign. Instead, it relies on the passive voice, stating that its lawyers "have been made aware" of that campaign.

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the author of the article, not Pacific Bell.⁴ Moreover, it has nothing to do with ex parte contacts. Instead, as the article makes abundantly clear, it concerns Pacific Bell's position that failing to require award recipients to pay for their awards puts non-awardees -- who must purchase their licenses at auction and charge their customers more to recover capital costs -- at a competitive disadvantage.⁵

Any doubts concerning Pacific Bell's motive for filing the letter can be resolved by reference to the letter itself. As I explained therein, the Commission's rules require anyone with information concerning potentially improper ex parte contacts to report them.⁶ Had Pacific Bell failed to bring those contacts to the Commission's attention, Pacific Bell itself would have violated the Commission's rules. In addition, failure to raise the issue quite possibly would have precluded Pacific Bell from raising them on review. See Virgin Islands Tel. Co. v. FCC, 989 F.2d 1231, 1237 (D.C. Cir. 1993) ("it is fundamental that issues must be raised before the Commission as a prerequisite to [judicial] review"). See also 47 U.S.C. § 405. I therefore find APC's assertion that Pacific Bell included the phrase "in anticipation of judicial review" "to assist Pacific Bell in attracting press coverage," APC Letter at 2 n.3, simply baffling. That phrase means just what it says: Pacific Bell is contemplating seeking review, and in anticipation thereof, seeks to preserve any issue it might raise.

On the merits, APC's denials are surprisingly weak. To begin with, APC argues that it is under no obligation to account for the fact that it had "several" (more precisely, thirty) ex parte contacts in the two months leading up to the award. APC Letter at 3 n.6. APC contends that "[t]he issue of how many meetings occurred . . . is simply irrelevant." Ibid. But it remains unclear what legitimate reason APC might have for 30 ex parte contacts during this critical two-month period. The sheer number and intensity of the contacts itself creates an appearance of impropriety on the part of APC, even if every such contact were

⁴Although APC neglects to give a citation for the language it quotes, that language comes from an article in the Sacramento Bee, Jan. 31, 1994, at C1.

⁵This was Pacific Bell's position in its comments before the Commission as well.

⁶See Letter from Michael K. Kellogg to Andrew S. Fishel 1 (January 26, 1994) (citing 47 C.F.R. § 1.1214).

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technically proper. As Lenin once remarked on the subject of tanks, sometimes quantity has a quality all its own.

Beyond this, as my initial letter and APC's response make clear, not all of APC's reports of its contacts were proper under the Commission's rules.

First, my letter (at 4) stated that, on October 25, APC filed a letter indicating only that APC had had three ex parte meetings to discuss "issues relating to the above-referenced docket [i.e., ET Docket No. 93-266]." I pointed out that, at the time of the contacts so described, no filings in No. 93-266 had been made, "so the discussions could not have been 'reflected' in APC's previous filings within the meaning of Section 1.1206(a)(2)." APC responds that, "by the time it held its first discussion on" Docket No. 93-266, in fact "it had filed a position paper that described all [APC's] arguments." APC Letter at 5.

APC, however, concedes that its position paper was filed not in ET Docket No. 93-266, the proceeding about which the ex parte letter was filed, but in Gen. Docket No. 90-314. APC Letter at 5 ("That position paper was filed on September 27, 1993 -- before ET Docket 93-266 had even been opened"). The Commission's rules explicitly require disclosure if a party makes ex parte presentations in a proceeding and its arguments or data are not already reflected in the party's "previous" submissions "in that proceeding." 47 C.F.R. § 1.1206(a)(2) (emphasis added). Indeed, underscoring that requirement, the rules indicate that the memorandum "must clearly indicate on its face the docket number of the particular proceeding." Ibid. Because APC's contacts explicitly concerned Docket No. 93-266 (as the caption of its letter indicates), and because its positions could not possibly have been reflected in APC's previous written filings in that proceeding (there being none), it is clear that APC violated the Commission's rules. If in fact APC discussed its recent filing in General Docket No. 90-314, the proper course would have been to include those filings or at least refer to them in its letter.

Second, I pointed out in my letter that APC, by its letter of November 2, 1993, acknowledged making a presentation concerning

⁷These contacts were memorialized in a Letter from Kurt A. Wimmer to William F. Caton (Oct 25, 1993).

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February 23, 1994
Page 5

"the pioneer preference portion of Docket 90-314."⁸ APC does not deny the concession or that "the pioneer preference portion of Docket 90-314" is restricted. Instead, APC responds that I am engaging in selective quotation. The full text of the letter, APC asserts, "indicates, quite clearly, that APC discussed with the General Counsel's office its then-just-filed [Request for Separate and Expedited Treatment of 'Existing Pioneer Preference' Issues in ET Docket 93-266] and the pleadings on file, which concerned unrestricted rule making issues in the referenced dockets [*i.e.*, 93-266 and 90-314]." APC Letter at 8. But, first, APC's Request was itself not limited to the rulemaking issues in 93-266. In that document (at 8-9), APC stressed the public benefits of its obtaining its pioneer's preference and introducing its particular service as soon as possible. Any ex parte presentation to the Commission concerning those issues would be improper.⁹ Second, APC itself acknowledged in its November 2, 1993 letter reporting the ex parte contact that it addressed the size and scope of the award that it would receive. Such a presentation falls within the restricted portion of General Docket No. 90-314 and was therefore improper.¹⁰

⁸Letter at 1-2 (quoting Letter from Kurt A. Wimmer to William F. Caton (Nov. 2, 1993)).

⁹With respect to the nature of ET Docket No. 93-266, APC and I appear to be in substantial agreement. Although APC accuses me of creating a straw-man argument concerning the ex parte rules applicable to that proceeding, the straw man is entirely APC's. At no point do I suggest that ex parte contacts in 93-266 are entirely prohibited. Quite the opposite. I argued only that, to the extent 93-266 overlaps with the restricted portion of Docket No. 90-314, it must be considered a restricted proceeding as well. See Letter at n.5 ("the Notice makes ET Docket No. 93-266 a restricted proceeding with respect to individual pioneer preferences requests"). And that is precisely the interpretation that APC adopts. See APC Letter at 4 (contacts permitted in No. 93-266 "so long as the merits of the restricted proceeding are not discussed").

¹⁰I noted in my letter that at least part of this discussion apparently occurred in response to a question raised by the office of the General Counsel. APC, in its response, does not suggest that its presentation on the issue was limited to answering that question. In any event, under 47 C.F.R. § 1.1204(b)(7) (note), ex parte statements regarding restricted proceedings, if given in reply to questions by Commission personnel, must be summarized and

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Third, I pointed out in my letter (at 2) that APC's letter of September 29, 1993, while indicating that an ex parte contact concerning Docket No. 90-314 occurred, asserts that APC did not raise the "rulemaking issues" or "who should receive a pioneer's preference."¹¹ As I explained, those two exclusions cover everything at issue in 90-314; consequently, it is unclear what issues APC did raise. APC responds that its letter "unambiguously reports that APC discussed" the effect of the Commission's new auction authority on the preference program. APC Letter at 7 (emphasis added). Even a quick glance at the September 29, 1993 letter reveals that assertion to be false. Excluding the disclaimers concerning what was not discussed, the letter states only that "[t]he substance of the matters discussed is reflected in APC's written submissions on file with the Commission." No matter how the language of APC's September 29 letter is teased or twisted, one cannot pull from it the assertion that discussion centered on "whether competitive bidding undermines the preference program and the appropriate scope of preference awards," much less an "unambiguou[s]" assertion to that effect.

In fact, the rest of the September 29, 1993 letter demonstrates it cannot be so read. The propriety of continuing the pioneer's preference program despite Congress' decision to authorize auctions was shortly thereafter separated by the Commission into a separate rulemaking, as ET Docket No. 93-266. To the extent that this issue was present in 90-314 (prior to the commencement of 93-266) it was a rulemaking issue. Yet, according to the letter, rulemaking questions in 90-314 were not discussed (and 93-266 did not yet exist).

In sum, despite the length of APC's submission and the vigor of its rhetoric, APC has offered very little response to the substance of my letter. Given that APC's letter effectively concedes at least two violations and inadequately responds to questionable circumstances surrounding its remaining contacts, its aggressive tone seems out of place -- especially given that APC's attorneys and officers were found once before to be in violation of the Commission's ex parte rules. See 3 FCC Rcd 6141 (1988)

the summary must be "served upon the other parties to the proceeding." APC does not contend that it served the parties as required by the rule, even though I pointed out that failure in my letter (at 2 n.2). Nor is it clear that APC's summary is adequate.

¹¹Letter from Jonathan D. Blake to William F. Caton (Sept. 29, 1993).

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(discussing violations committed by APC attorney Jonathan D. Blake and Wayne D. Schelle, Chairman of APC).

Omnipoint and Cox's responses, although more restrained than APC's, similarly fail to respond to my concerns.¹² In my letter, I noted that several of Omnipoint's letters memorializing ex parte contacts might be considered incomplete. Specifically, all of Omnipoint's eleven ex parte letters filed in ET Docket No. 93-266 indicated only that Omnipoint had presented its "position with respect to the Commission's proposals." With respect to the first four of those letters, the arguments and data presented could not have been reflected in previous written filings because, at that time, Omnipoint had not made any. See Letter at 4.

Cox's letters, I noted, suffer from an identical defect. In the letters memorializing each of its four ex parte contacts in ET Docket No. 93-266, Cox asserts only that it had raised "outstanding issues in the Commission's Pioneer Preference Notice Proceeding." Once again the data or arguments presented could not have been reflected in the party's previous filings in that proceeding, as (once again) none had been filed.

Omnipoint and Cox respond only by pointing out (1) that ET Docket No. 93-266 and Gen. Docket No. 90-314 had a close nexus and (2) that they, at some point or another, filed many pages of comments in each. Cox Letter at 3-5; Omnipoint Letter at 2. Neither of these assertions is responsive. As explained above, the Commission's rules are clear. When a party makes an ex parte presentation in one proceeding, it must file a summary of any arguments or data not already reflected in the party's "previous" submissions "in that proceeding." 47 C.F.R. § 1.1206(a)(2) (emphasis added). That Omnipoint's or Cox's comments may have been reflected in previously filed comments in another proceeding, or that their after-filed comments in ET Docket No. 93-266 may have reflected the contents of the earlier ex parte contacts, is simply

¹²One notable exception is Omnipoint's indication that its letter of September 29, 1993, in ET Docket No. 90-314, was served on all the parties to that proceeding. The letter does not so indicate on its face. To the contrary, the letter's extensive list of cc's shows only that it was widely distributed within the Commission. Moreover, the copy Pacific Bell was able to obtain did not contain any such proof of service. But the fact remains that, since Omnipoint did serve the parties as required by the Commission's rules, there is no reason for any investigation of that particular issue.

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irrelevant. Pacific Bell and others had a right to know what Cox and Omnipoint were telling the Commission on the same day that any presentation was made. 47 C.F.R. § 1.1206(a)(2) (memorandum must be filed on the day of the contact). Cox's and Omnipoint's post-hoc assertions concerning what was discussed, like APC's, are simply inadequate.

These may seem, to some, like mere technical violations of the Commission's rules. They are not. Because of the "close nexus" (Omnipoint Letter at 2) between ET Docket No. 93-266 and General Docket No. 90-314, a restricted proceeding, strict compliance with the Commission's rules is critical.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael K. Kellogg", with a stylized flourish at the end.

Michael K. Kellogg

cc: Brian F. Fontes
Randall Coleman
Byron F. Marchant
Karen Brinkmann
Robert Pepper
Thomas Stanley
William Kennard
All Parties in ET Dkt. No. 93-266
and Gen. Dkt. No. 90-314

APPENDIX D

**Ex Parte Contacts By
APC, Cox, & OmniPoint**

01/15/92	RESPONSE TO QUESTIONS FILED BY SIKES - APC
03/17/92	NOTICE OF EX PARTE CONTACT (REQUEST FOR PARTIAL DISMISSAL OF OPPOSITION) - COX
04/09/92	NOTICE OF EX PARTE CONTACT - APC
05/27/92	(3)NOTICES OF EX PARTE CONTACT - APC
05/28/92	NOTICE OF EX PARTE CONTACT - APC
06/22/92	(3) NOTICE OF EXPARTE CONTACT - OPT
07/02/92	(2)NOTICES OF EX PARTE CONTACT - APC (RESPONSE AND MOTN FOR LEAVE TO FILE)
07/07/92	(5)NOTICE OF EX PARTE CONTACT - OPT
07/08/92	NOTICE OF EX PARTE CONTACT - COX
11/04/92	NOTICE OF EX PARTE CONTACT - APC
11/25/92	STATEMENT REGARDING MOTN FOR EXTENSION OF TIME - APC
03/02/93	NOTICE OF EXPARTE CONTACT - OPT
03/24/93	NOTICE OF EXPARTE CONTACT - APC
03/25/93	NOTICE OF EXPARTE CONTACT - APC
04/23/93	NOTICE OF EXPARTE CONTACT - APC
05/10/93	NOTICE OF EXPARTE CONTACT - OPT
05/11/93	NOTICE OF EXPARTE CONTACT - OPT
05/20/93	NOTICE OF EXPARTE CONTACT - COX
05/21/93	NOTICE OF EXPARTE CONTACT - APC
06/11/93	NOTICE OF EXPARTE CONTACT - APC
06/17/93	(4)NOTICES OF EXPARTE CONTACT - APC
06/23/93	NOTICE OF EXPARTE CONTACT - APC
06/25/93	(2)NOTICES OF EXPARTE CONTACT - APC

07/01/93	NOTICE OF EXPARTE CONTACT - APC
07/07/93	LETTER COMMENTS FILED - APC
07/08/93	NOTICE OF EXPARTE CONTACT - APC
07/21/93	NOTICE OF EXPARTE CONTACT - APC
07/27/93	NOTICE OF EXPARTE CONTACT - OPT
07/28/93	NOTICE OF EXPARTE CONTACT - COX
07/29/93	NOTICE OF EXPARTE CONTACT - OPT
08/02/93	NOTICE OF EXPARTE CONTACT - OPT
08/06/93	NOTICE OF EXPARTE CONTACT - APC
08/09/93	NOTICE OF EXPARTE CONTACT - APC
08/11/93	NOTICE OF EXPARTE CONTACT - OPT
08/12/93	NOTICE OF EXPARTE CONTACT - APC
08/17/93	NOTICE OF EXPARTE CONTACT - APC
08/17/93	NOTICE OF EXPARTE CONTACT - OPT
08/18/93	(3)NOTICES OF EX PARTE CONTACT - COX
08/19/93	NOTICE OF EXPARTE CONTACT - APC
08/19/93	NOTICE OF EXPARTE CONTACT - APC
08/24/93	NOTICE OF EXPARTE CONTACT - OPT
08/25/93	NOTICE OF EXPARTE CONTACT - APC
08/30/93	NOTICE OF EXPARTE CONTACT - OPT
08/31/93	NOTICE OF EXPARTE CONTACT - APC
08/31/93	NOTICE OF EXPARTE CONTACT - APC
08/31/93	NOTICE OF EXPARTE CONTACT - APC
09/02/93	NOTICE OF EXPARTE CONTACT - COX

09/03/93	NOTICE OF EXPARTE CONTACT - APC
09/07/93	NOTICE OF EXPARTE CONTACT - APC
09/07/93	(2)NOTICE OF EXPARTE CONTACT - APC
09/09/93	NOTICE OF EXPARTE CONTACT - APC
09/13/93	NOTICE OF EXPARTE CONTACT - APC
09/13/93	NOTICE OF EXPARTE CONTACT - APC
09/14/93	(2)NOTICE OF EXPARTE CONTACT - APC
09/14/93	NOTICE OF EXPARTE CONTACT - APC
09/14/93	NOTICE OF EX PARTE CONTACT(VIDEO CASSETTE ATTACHED THERETO PLACED IN BULK STORAGE CABINET) - OPT
09/15/93	(5)NOTICES OF EXPARTE CONTACT - APC
09/15/93	(2)NOTICES OF EXPARTE CONTACT - APC
09/15/93	NOTICE OF EXPARTE CONTACT - OPT
09/15/93	NOTICE OF EXPARTE CONTACT(VOLUMINOUS ATTACHMENTS ASSOCIATED THEREWITH) - APC
09/16/93	(4)NOTICES OF EXPARTE CONTACT - APC
09/16/93	NOTICE OF EXPARTE CONTACT - OPT
09/16/93	NOTICE OF EXPARTE CONTACT - APC
09/27/93	NOTICE OF EXPARTE CONTACT - APC
09/28/93	NOTICE OF EXPARTE CONTACT - COX
09/29/93	NOTICE OF EXPARTE CONTACT - OPT
09/29/93	NOTICE OF EXPARTE CONTACT - APC
09/29/93	NOTICE OF EXPARTE CONTACT - OPT
10/04/93	NOTICE OF EXPARTE CONTACT - APC (LISTED AS PCS ON EXPARTE NOTICE)
11/02/93	NOTICE OF EXPARTE CONTACT - APC
11/08/93	NOTICE OF EXPARTE CONTACT - APC

11/09/93	NOTICE OF EXPARTE CONTACT - APC
11/12/93	NOTICE OF EXPARTE CONTACT - APC
11/19/93	NOTICE OF EXPARTE CONTACT - APC
11/23/93	NOTICE OF EXPARTE CONTACT - APC
11/24/93	NOTICE OF EXPARTE CONTACT - APC
12/01/93	NOTICE OF EXPARTE CONTACT - APC
12/03/93	(2)NOTICES OF EXPARTE CONTACT - APC
12/06/93	NOTICE OF EXPARTE CONTACT - APC
12/07/93	NOTICE OF EXPARTE CONTACT - APC
12/07/93	NOTICE OF EXPARTE CONTACT - APC
12/08/93	(2)NOTICES OF EXPARTE CONTACT - APC
12/09/93	NOTICE OF EXPARTE CONTACT - APC
12/10/93	NOTICE OF EXPARTE CONTACT - APC
12/16/93	NOTICE OF EXPARTE CONTACT - APC
12/17/93	NOTICE OF EXPARTE CONTACT - APC
12/20/93	NOTICE OF EXPARTE CONTACT - APC
12/22/93	NOTICE OF EXPARTE CONTACT - APC
01/14/94	NOTICE OF EXPARTE CONTACT - APC
01/19/94	NOTICE OF EXPARTE CONTACT - APC
01/24/94	NOTICE OF EXPARTE CONTACT - OPT
02/23/94	NOTICE OF EXPARTE CONTACT - OPT
02/24/94	NOTICE OF EXPARTE CONTACT - APC
02/25/94	NOTICE OF EXPARTE CONTACT - APC
03/02/94	NOTICE OF EXPARTE CONTACT - APC

#121 Total Contacts

Ex Parte Contacts

by PCS Action

03/10/93 (4)

03/12/93 (2)

05/25/93

06/11/93

06/14/93

06/15/93

06/24/93

06/29/93

07/08/93

07/21/93

07/21/93

07/26/93

07/29/93

08/09/93

08/10/93

08/11/93

08/13/93

09/08/93

09/09/93

09/09/93

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09/15/93 (3)

03/01/94

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APPENDIX E

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November 1, 1993

HAND DELIVERY

William F. Caton
Federal Communications Commission
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Room 222
Washington, D.C. 20554

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NOV - 1 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: ET Docket No. 93-266
Ex Parte Presentation

Dear Mr. Caton:

Pursuant to Section 1.1206 of the Commission's rules, we advise you that, this afternoon, on behalf of Omnipoint Communications, Inc., my partner, Ronald L. Plessner, and I met with Randall S. Coleman, Legal Advisor to Commissioner Ervin S. Duggan.

We discussed Omnipoint's position with respect to the Commission's proposals in the above-referenced rulemaking proceeding.

In accordance with the Commission's rules, we are submitting the original and a copy of this letter for the docket file.

Very truly yours,


Mark J. Tauber

cc: Randall S. Coleman

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November 2, 1993

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY MESSENGER

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: ET Docket No. 93-266

Dear Mr. Caton:

American Personal Communications ("APC"), pursuant to Section 1.1206(a)(2) of the Commission's Rules, 47 C.F.R. § 1.1206(a)(2) (1992), hereby notifies the Commission that representatives of APC discussed issues relating to the above-referenced docket with Commissioner Andrew C. Barrett on October 22, 1993. The matters discussed are contained in APC's written submissions in this docket.

Please direct any inquiries concerning this matter to the undersigned.

Very truly yours,



Kurt A. Wimmer

Attorney for American
Personal Communications

cc: Hon. Andrew C. Barrett

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November 2, 1993

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Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: ET Docket No. 93-266; Gen. Docket 90-314

Dear Mr. Caton:

American Personal Communications ("APC"), pursuant to Section 1.1206(a)(2) of the Commission's Rules, 47 C.F.R. § 1.1206(a)(2) (1992), hereby notifies the Commission that APC's counsel met on November 1, 1993 with Renee Licht, Esq., David H. Solomon, Esq., and Peter A. Tenhula, Esq. of the Office of General Counsel.

The discussions concerned matters contained in the written submissions APC has filed in Docket 93-266 and in the pioneer preference portion of Docket 90-314. The Office raised the question of whether granting a portion of a 30 MHz/MTA license to PCS pioneers might require a modification of the PCS rules, as opposed to an exception to or waiver of these rules. APC's counsel stated that they believed modifying the rules to accomplish such a carve-out would be unnecessary and time-consuming, but that APC likely would address this point on reconsideration in Docket 90-314 and in more detail in its comments on Docket 93-266.

Please direct any inquiries concerning this matter to the undersigned.

Very truly yours,


Kurt A. Wimmer

Attorney for American
Personal Communications

cc: Renee Licht, Esq.
David H. Solomon, Esq.
Peter A. Tenhula, Esq.

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November 2, 1993

HAND DELIVERY

William F. Caton
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: ET Docket No. 93-266
Ex Parte Presentation

Dear Mr. Caton:

Pursuant to Section 1.1206 of the Commission's rules, we advise you that, this morning, Douglas G. Smith, President of Omnipoint Communications, Inc., my partner, Ronald L. Plessner, and I met with Chairman James H. Quello, Brian F. Fontes and Rudolfo M. Baca in Chairman Quello's office.

We discussed Omnipoint's position with respect to the Commission's proposals in the above-referenced rulemaking proceeding.

In accordance with the Commission's rules, we are submitting the original and a copy of this letter for the docket file.

Very truly yours,


Mark J. Tauber

cc: Chairman James H. Quello
Brian F. Fontes
Rudolfo M. Baca

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November 3, 1993

HAND DELIVERY

William F. Caton
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: ET Docket No. 93-266
Ex Parte Presentation

FEDERAL COMMUNICATIONS
COMMISSION
OFFICE OF THE
SECRETARY

Nov 3 '93

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Dear Mr. Caton:

Pursuant to Section 1.1206 of the Commission's rules, we advise you that, this morning, Douglas G. Smith, President of Omnipoint Communications, Inc., my partner, Ronald L. Plessner, and I met with Commissioner Ervin S. Duggan and his Legal Advisor, Linda L. Oliver.

We discussed Omnipoint's position with respect to the Commission's proposals in the above-referenced rulemaking proceeding.

In accordance with the Commission's rules, we are submitting the original and a copy of this letter for the docket file.

Very truly yours,


Mark J. Tauber

cc: Commissioner Ervin S. Duggan
Linda L. Oliver, Esq.

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PIPER & MARBURY

1200 NINETEENTH STREET, N.W.
WASHINGTON, D. C. 20036-2430
202-861-3900
FAX: 202-223-2085

MARK J. TAUBER
202-861-3913

BALTIMORE
NEW YORK
PHILADELPHIA
LONDON
EASTON, MD

November 3, 1993

HAND DELIVERY

William F. Caton
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: ET Docket No. 93-266
Ex Parte Presentation

FEDERAL COMM. COMMISSION
OFFICE OF THE
SECRETARY

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ATTORNEYS AT LAW

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WERNER K. HARTENBERGER

November 3, 1993

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Ex Parte Meeting
ET Docket No. 93-266

Dear Mr. Caton:

On behalf of Cox Enterprises, Inc. ("Cox") and pursuant to Section 1.1206(a) of the Commission's Rules, this letter will constitute notice that on November 3, 1993 Alexander Netchvolodoff, Vice President of Public Policy for Cox, and Werner K. Hartenberger of Dow, Lohnes & Albertson met with Byron F. Marchant, Legal Advisor to Commissioner Andrew C. Barrett to discuss outstanding issues in the Commission's Pioneer Preference Notice proceeding.

Should any questions arise in connection with this notification, please do not hesitate to contact the undersigned.

Respectfully submitted,

Werner K. Hartenberger

Werner K. Hartenberger
Counsel for Cox Enterprises, Inc.

pmd

CC: Byron F. Marchant, Esquire

DOW, LOHNES & ALBERTSON

ATTORNEYS AT LAW

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Counsel for Cox Enterprises, Inc.

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Linda L. Oliver, Esquire

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